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STATE OF MISSOURI
PUBLIC SERVICE COMMISSION

TRANSCRIPT OF PROCEEDINGS

Posthearing Conference

October 16, 2002
Jefferson City, Missouri
Volume 6

In the Matter of the Petition of)
MCImetro Access Transmission)
Services LLC, Brooks Fiber)
Communications of Missouri, Inc.,)
and MCI WorldCom Communications,) Case No. TO-2002-222
Inc., for Arbitration of an)
Interconnection Agreement With)
Southwestern Bell Telephone Company)
Under the Telecommunications Act of)
1996.)

VICKY RUTH, Presiding,
SENIOR REGULATORY LAW JUDGE.

REPORTED BY:

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1 P R O C E E D I N G S

2 JUDGE RUTH: Let's go ahead and go on the
3 record, please.

4 Good morning. We are here for a posthearing
5 conference in TO-2002-222, in the Matter of the Petition of
6 MCImetro Access Transmission Services, LLC, Brooks Fiber
7 Communications of Missouri, Inc. and MCI WorldCom
8 Communications, Inc. for Arbitration of an Interconnection
9 Agreement with Southwestern Bell Telephone Company Under the
10 Telecommunications Act of 1996.

11 As you know, my name is Vicky Ruth and I'm the
12 Regulatory Law Judge assigned to this case. Today's date is
13 October 16, and it is a few minutes after 10.

14 Let's begin by taking entries of appearance.
15 Southwestern Bell?

16 MS. MacDONALD: Mimi MacDonald for
17 Southwestern Bell. My address is One SBC Center, Room 3510,
18 St. Louis, Missouri 63101.

19 JUDGE RUTH: Thank you.
20 WorldCom?

21 MR. LUMLEY: Good morning, your Honor. Carl
22 Lumley of the Curtis Oetting law firm appearing for MCImetro
23 Access Transmission Service, LLC, Brooks Fiber
24 Communications of Missouri, Inc. and MCI WorldCom
25 Communications, Inc.

1 JUDGE RUTH: Thank you.

2 Staff?

3 MR. BATES: Good morning, your Honor. My name
4 is Bruce H. Bates. I'm appearing on behalf of the Staff of
5 the Missouri Public Service Commission. My address is Post
6 Office Box 360, Jefferson City, Missouri 65102.

7 JUDGE RUTH: Thank you.

8 Okay. We have a couple of issues I'd like to
9 address this morning, and I want to point out that the
10 Commission issued its Arbitration Order in February 2002.
11 There have been several difficulties with the parties
12 getting the three arbitration agreements or arbitrated
13 agreements together.

14 We had set a prehearing conference for, I
15 think, back in May, but I was assured that imminent
16 agreement was on its way and canceled that prehearing
17 conference, a decision which I now think might not have been
18 the best, and I'm a little disappointed that the parties are
19 still continuing to have problems and arguing over things
20 such as how many signature pages were provided by whom and
21 whether enough signature pages were provided.

22 And I hope that today you're going to tell me
23 that you've worked out at least the signature page issue.

24 MS. MacDONALD: Those have been filed this
25 morning.

1 JUDGE RUTH: Thank you. I was a bit amazed
2 that several rounds of pleadings were devoted to whether or
3 not enough signature pages had been provided by one party or
4 another. I'm glad that has finally been addressed.

5 We'll move on, then, to the MCImetro
6 agreement, which has still not yet been filed. It's the
7 last one, correct?

8 Okay. There were three issues in my Order
9 Directing Filing from, I believe it was August 30th, where I
10 had mirrored the language that Staff had pointed out and
11 asked the parties to respond to Staff's agreement. That is
12 all my Order Directing Filing was intended to do; mentions
13 Staff's concerns and asks the parties to respond.

14 It was not an opportunity to relitigate any
15 issues or take new evidence, and I want to make sure the
16 parties understand. And with that in mind, I'm going to ask
17 you to clarify your position. This is not the opportunity
18 to say the Commission should have done something
19 differently.

20 The first step here is getting the agreement
21 that complies with the Arbitration Order. Then the next
22 step might be a motion for rehearing, reconsideration or an
23 appeal when it comes to that, but first you need to get the
24 agreement that complies with the Commission's Order.

25 Now, if the Commission's Order is inconsistent

1 or unclear, that's something that we can address, but this
2 is not the time to change the Commission's mind as to what
3 should have been, in your minds, ordered by the Commission.

4 The first thing that Staff mentioned was a
5 concern or a question regarding some language, and if I have
6 the numbers right, it was Staff asked why the language in
7 9.4.2.6 was appropriate to be included when 9.5.2.4, which
8 is nearly identical, was required to be omitted. The
9 Commission did not ask whether 9.5.2.4 should have been
10 omitted, just mirrored Staff's language pointing out that
11 one was included and one, which was nearly identical, was
12 omitted.

13 This is not the time to debate whether or not
14 9.5.2.4 should now be reinstated. That's not what the
15 Commission's looking at. We're just looking at whether or
16 not the other provision should have been deleted.

17 WorldCom, it's my understanding, claims that
18 it was included by oversight and should now be omitted.
19 Southwestern Bell, however, points out that the Arbitration
20 Order in its reasoning refers to language in-- that refers
21 to language making reference to activities outside the state
22 of Missouri, and that was one of the reasons that Staff
23 recommended this language be omitted.

24 I understand Southwestern Bell has now said
25 the basis, in your opinion, was incorrect for that, but the

1 Commission apparently excluded that language because it
2 referred to activities outside the state of Missouri,
3 correct?

4 MS. MacDONALD: My understanding is that the
5 Commission excluded it based on the fact that it referenced
6 Texas when in reality that was a prior copy of a submission
7 of the language, and the actual official copy which was
8 submitted by Staff corrected the language to properly
9 reference Missouri.

10 So the basis for the decision that it was
11 referring to activities outside of the state of Texas
12 doesn't apply.

13 JUDGE RUTH: In the final issue statement,
14 however, wasn't -- wasn't the incorrect reference to Texas
15 then included in the issue statement?

16 MR. LUMLEY: It depends on what -- my
17 recollection is that in the actual filing of the final, the
18 wrong language was still included and then Staff filed
19 substitute pages to correct that a few days later.

20 MS. MacDONALD: Substitute sheet 102 which was
21 filed by the Staff, I'm not exactly too sure when, but it
22 was substitute page 102 reflects that SWBT provides CNAM
23 service query as set forth in this attachment only if such
24 service is used for CLEC's LSP activities on behalf of its
25 Missouri local service customers where SWBT is the incumbent

1 local exchange carrier. CLEC agrees that any other use of
2 SWBT's calling name database for the provision of CNAM
3 service query by CLEC will be pursuant to the terms,
4 conditions, rates and charges of a separate agreement
5 between the parties.

6 So the reference to Texas was omitted in Issue
7 No. 17.

8 JUDGE RUTH: Okay. And if the reference to
9 Texas was omitted, what was Staff's suggestions in support?
10 Were your suggestions in support changed? Because
11 previously you had recommended that it be omitted because of
12 the reference to activities outside the state of Missouri.
13 If the reference to Texas got pulled out, did you change
14 your suggestion in support and the Commission missed that?

15 MR. BATES: Your Honor, can Ms. Dietrich
16 answer that with me?

17 JUDGE RUTH: Certainly.

18 MR. LUMLEY: Your Honor, while they're
19 looking, can I make one comment?

20 I do want to point out that the parties did
21 mutually file a conformed agreement July 11th, I want to
22 say. So that the dispute that's before you is not about --

23 JUDGE RUTH: You mean submitted or --

24 MR. LUMLEY: Well, the Commission ordered us
25 to submit it to Staff.

1 JUDGE RUTH: Right.

2 MR. LUMLEY: And we did. Then the --

3 JUDGE RUTH: Go ahead.

4 MR. LUMLEY: And then Staff filed their report
5 and said, you know, you should direct us to file the Brooks
6 and MCI WorldCom agreements, but that they had questions
7 they wanted us to answer before they made a final
8 recommendation on the Metro agreement.

9 JUDGE RUTH: So you're saying it actually --

10 MR. LUMLEY: We clearly have disputes between
11 us about what the Commission should do, but the parties have
12 agreed to what a conformed agreement should say.

13 MS. MacDONALD: I disagree with that. We
14 submitted a conformed agreement in compliance with the
15 Commission Order, but that does not constitute a
16 confirmation of the feasibility or acceptability of this
17 agreement.

18 MR. LUMLEY: I'm not suggesting it does.

19 JUDGE RUTH: I agree. I thought that the
20 agreement that you had filed previously still had some
21 provisions missing. You're saying it was in total, it had
22 everything in it?

23 MR. LUMLEY: I believe the parties mutually
24 agreed that what we submitted to Staff conformed to the
25 Arbitration Order. We have substantial disputes about

1 whether it should be approved or not, but we did not
2 disagree on what the document would look like to strictly
3 conform.

4 We think that and they think there's things
5 that should be changed, but I just wanted to clarify that
6 point, that we did submit that together to Staff.

7 JUDGE RUTH: Okay. And Staff did not file
8 their final recommendation; is that correct?

9 MR. LUMLEY: They filed questions, and then
10 you -- and then you directed us to answer those questions,
11 or file our comments about those questions I guess is more
12 accurate.

13 JUDGE RUTH: Thank you. And you were looking
14 something up. Did you find it?

15 MS. DIETRICH: Do you want me to speak?

16 JUDGE RUTH: That's fine.

17 MS. DIETRICH: In your Order and in Staff's
18 status report that we filed, we referenced Issues 17 and 33,
19 which were tied to those two specific sections of the
20 language.

21 In researching it after seeing what both
22 parties filed, there is also an Issue 15 where the 9.5.2.4
23 language is referenced and tied into, and in that particular
24 issue the section falls among much language that is
25 multi-state referenced, and I think that between the

1 different issues it was just missed, that it was corrected
2 in one spot and not corrected in the other.

3 And so that particular issue, our concern was
4 with it referencing Texas because it fell among many other
5 references to multi-states. And so since it is identical
6 language, with the exception of the reference to Texas, if
7 that's changed to Missouri, then it would be similar
8 language.

9 And the basis for our decision is that a
10 different issue which is supported in Issues 17 and 33 on
11 the 9.4.2.6 language, since that's actually getting into the
12 position, I don't know if you want me to state that or not.

13 JUDGE RUTH: So you're suggesting, though,
14 that since it ties into another issue, the only question is
15 not the issue of activities outside the state, it involves
16 these other issues and 17 and --

17 MS. DIETRICH: I think it was missed because
18 it ties into the other issue where it was recommended that
19 it be removed because of the references to the other states.

20 And so when we were looking at the agreement
21 for the issues or the sections related to Issue 17 and 33,
22 that was when it popped out, and as we were researching it
23 more, the actual recommendation to remove the language was
24 also in Issue 15, and so it was just an oversight that it
25 was corrected.

1 JUDGE RUTH: I still have a question. It may
2 have been corrected in the replacement page on the issues,
3 but then did you ever explain your reasoning for keeping
4 that piece out?

5 In other words, I'm trying to figure out where
6 the Commission might have missed your reasoning if it was
7 not -- that it had to do with activities outside of the
8 state. If there was another reason, where was that?

9 MS. DIETRICH: No. The reasoning was that it
10 had activities -- had references to other states, and that
11 was mainly in Issue 15 where it was really prominent.

12 And so when we filed the substitute sheets and
13 noticed the change from Missouri to Texas, my guess is that
14 the reference -- or the correlation between the two issues
15 at that point, you know, didn't stand out. It was just,
16 yes, they did change from Missouri to Texas -- or from Texas
17 to Missouri.

18 JUDGE RUTH: So in the record there is not any
19 reasoning that Staff gave to explain why 9.4.2.6 should be
20 included or excluded, either way?

21 MS. DIETRICH: There's support that 9.4.2.6
22 should be included on Issue 17. There's not support other
23 than the multi-state reference as to why 9.5.2.4 should be
24 deleted.

25 JUDGE RUTH: You said other than what?

1 MS. DIETRICH: The multi-state reference.

2 JUDGE RUTH: Okay. I want to clarify. So the

3 only suggestion in support of your position whatever for the

4 9.5.2.4 for excluding that had to do with the multi-state

5 reference, and Southwestern Bell has said that the

6 multi-state reference was taken out. So with that in mind,

7 does Staff now say that 9.5.2.4 should come back in --

8 MS. DIETRICH: Yes.

9 JUDGE RUTH: -- or that 9.4.2.6 should come

10 out?

11 MS. DIETRICH: That 9.5.2.4 should be in as we

12 recommended for 9.4.2.6.

13 JUDGE RUTH: Okay. Is that in the record

14 anywhere?

15 MS. DIETRICH: No.

16 JUDGE RUTH: Okay. I don't have any more

17 questions regarding the 9.4.2.6/9.5.2.4 issue. If you have

18 a very, very brief statement that you want to give, I'll

19 give each of you the opportunity. Otherwise, we'll move on.

20 Very briefly?

21 MR. LUMLEY: Yes, your Honor. I would

22 respectfully disagree with Staff and submit that their

23 information also supported the deletion of that section

24 9.5.2.4 and, likewise, would justify the elimination of

25 9.4.2.6 as well based on the local use restriction language

1 that the Commission acknowledged was Staff's recommendation
2 in the Arbitration Order because it's a violation of
3 51.309(b) which expressly allows a CLEC to use unbundled
4 elements to provide exchange access service to itself in
5 order to provide interexchange services, not as an
6 interexchange carrier, but to provide exchange access to
7 itself.

8 And based on that we believe that the
9 recommendation to delete 9.5.2.4 was correct and that
10 9.4.2.6 should come out as well.

11 JUDGE RUTH: But you understand that Staff is
12 saying --

13 MR. LUMLEY: I understand that, but the
14 Arbitration Order specifically refers to other Staff
15 recommendations on the sections, and I think that they've
16 dismissed it.

17 JUDGE RUTH: Okay. And Southwestern Bell?

18 MS. MacDONALD: Obviously we agree with Staff
19 on this particular matter. We believe that both should be
20 included, and we felt that they were so intertwined that
21 that is the reason why we included both -- a discussion of
22 both sections in our pleading.

23 We believe that the intent of both 9.4.2.6 and
24 9.5.2.4 is that SWBT will provide LIDB and CNAM service only
25 as such service is used in MCImetro's capacity as a local

1 service provider, not in its capacity as an IXC, and when it
2 operates as an IXC state and federal access tariffs address
3 such use. These provisions have no business in a local
4 interconnection agreement.

5 JUDGE RUTH: Okay. Now, let me clarify. The
6 conformed agreement that neither party is totally happy with
7 but the one back from this summer, how does it address these
8 two provisions?

9 MR. LUMLEY: It has 9.5.2.4 excluded and
10 9.4.2.6 included.

11 JUDGE RUTH: Okay.

12 MR. LUMLEY: Because that's what the
13 Commission ordered.

14 MS. MacDONALD: Your Honor, could I just note
15 one thing? With regard to the language regarding
16 specifically whether or not this should be in the Order, I
17 think the Order specifically says, and I quote, Staff does
18 not believe that an interconnection agreement is the proper
19 venue for inclusion of language that allows an interexchange
20 carrier access to an ILEC's LIDB and CNAM databases.

21 So we think that further provides support for
22 Staff's position and our position that the only reason why
23 9.5.2.4 was excluded whereas 9.4.2.6 was included was based
24 on the reference to Texas which had been corrected.

25 JUDGE RUTH: Where did you read from?

1 MS. MacDONALD: That's in the Arbitration
2 Order on pages 33 and 34.

3 JUDGE RUTH: Okay. About where? I just want
4 to make a note so I can easily find this again.

5 MS. MacDONALD: There's a paragraph that
6 starts under 47 CSR 51.309(b), and about half -- I'd say
7 three-quarters of the way down it says, starting on the
8 right-hand side, three words in, Staff does not believe.

9 JUDGE RUTH: Okay. Thank you.

10 MR. LUMLEY: And, your Honor, I'm referring to
11 the same section of the Order.

12 JUDGE RUTH: Okay. I want to move on to the
13 questions regarding Issue 30, Attachment 27. Staff had
14 asked the question, Why is the revised language now
15 acceptable and technically feasible? WorldCom notes that,
16 according to WorldCom, SWBT has agreed to include this
17 language. SWBT has filed several rounds of pleadings which
18 suggest otherwise.

19 MS. MacDONALD: Well, it's not that we
20 disagree that we agreed to the language in 3.1. We agree
21 that we agreed to that language. We just are of the opinion
22 that Staff's question was broader as to whether or not
23 Attachment 27 was technically feasible and acceptable, and
24 we do not believe that it's either technically feasible or
25 acceptable.

1 Section 3.1 is just a mirror description of
2 the DUF process and does not -- is not a really technically
3 feasible provision.

4 JUDGE RUTH: I don't think Staff's status
5 report was asking about the feasibility of the entire
6 Attachment 27, but I could be wrong. Staff?

7 MS. DIETRICH: Just the language in 3.1.

8 JUDGE RUTH: 3.1. Okay. That's the only
9 question I had regarding the 3.1. If you want to say
10 something very briefly, Mr. Lumley, you may.

11 MR. LUMLEY: Well, all I would say, your
12 Honor, is that the Commission weighed the parties' positions
13 after the hearing. It's a very detailed section of the
14 Arbitration Order. It lists 19 specific reasons why
15 Southwestern Bell's proposal was not feasible, described our
16 position as detailed, completely reciprocal and fair, and
17 adopted it, and I think the matter should be deemed
18 resolved.

19 JUDGE RUTH: Southwestern Bell?

20 MS. MacDONALD: Well, we know that the matter
21 is not resolved and, in fact, have had ongoing negotiations
22 with WorldCom regarding this specific attachment because
23 even if the Commission approves the conformed
24 interconnection agreement, it simply cannot be implemented.
25 There's absolutely no technical way to do the things that

1 are requested in that attachment.

2 I can provide specific detail of why it cannot
3 occur, but regardless of whether it's addressed now or
4 subsequently, at some point this is going to have to be
5 addressed because we are not going to be able to implement
6 it.

7 JUDGE RUTH: Don't you agree, though, that
8 getting into all of Southwestern Bell's examples would be
9 reopening the record and would require more than just some
10 pleadings filed by the parties?

11 MS. MacDONALD: I don't know that I agree with
12 that, because I believe that there have been ongoing
13 discussions with WorldCom such that this arb-- this specific
14 attachment may still be fixed as a result of negotiations,
15 in which case I don't think there would need to be any
16 additional hearings.

17 And, in fact, I mean, that only benefits both
18 parties as well as the Commission, because, I mean, if we're
19 ordered to do it, we're ordered to do it, but we can't do
20 it, so it's going to arise again.

21 JUDGE RUTH: So are you saying you want to --
22 instead of having a finalized conformed approved agreement,
23 you want to continue negotiations with WorldCom on the
24 Attachment 27 issue?

25 MS. MacDONALD: I'm saying that or,

1 alternatively, the Commission should simply not approve
2 Attachment 27 because alternatively billed traffic is also
3 included in Attachment 10, and, therefore, you know, it's
4 already addressed.

5 But to the extent that it is addressed in
6 Attachment 27, we can't implement it. So I think the better
7 process would be to negotiate now rather than to be -- have
8 an approved interconnection agreement which cannot be
9 implemented and then we're just going to be back before the
10 Commission again.

11 JUDGE RUTH: And obviously WorldCom feels that
12 the Attachment 27 can be implemented?

13 MR. LUMLEY: Yes, your Honor.

14 JUDGE RUTH: And Staff?

15 MS. DIETRICH: We supported WorldCom's
16 Attachment 27, and the only question we had at this point
17 was because that specific section had changed, the language.

18 And, of course, I can't address the legalities
19 of having further negotiations and everything, but where we
20 were basing our position on further review was the fact that
21 Mr. Bates did ask the Southwestern Bell witness during the
22 hearing what sections were technically infeasible, and she
23 identified only the few sections that we mentioned in the
24 status report and in -- excuse me -- that the Commission
25 mentioned in their Order, and those were the sections that

1 we were checking to make sure they were changed and did not
2 check any of the other sections at that point to determine
3 whether they were technically feasible or not because at
4 that point the entire agreement had been approved by the
5 Commission except for those few changes.

6 MS. MacDONALD: Can I briefly respond to that?
7 I think that --

8 JUDGE RUTH: Very briefly.

9 MS. MacDONALD: -- the intent of what
10 Ms. Burgess said may not have been the best worded. I fully
11 admit that. But when she responded to Staff's questions,
12 she said, The other parts in here that I cite as technically
13 not feasible have to do with the language, and it may be
14 semantics.

15 And she goes on to describe other problems
16 that are not in those three sections. So she was
17 effectively telling everyone this is not going to work, and
18 that's on pages 894 and 895 of the transcript.

19 JUDGE RUTH: Okay. Your concerns are noted.

20 I want to mention also the issue Staff brought
21 up regarding the potential conflict between the Commission's
22 Arbitration Order and the Supreme Court case of Verizon
23 Communications, Inc. vs. the FCC. The Commission will, of
24 course, address that in its Order, but I would like to
25 clarify something with WorldCom.

1 When I read the pleadings, it seems that
2 WorldCom is implying that the Verizon decision requires some
3 straightforward changes to the Commission's Arbitration
4 Order. Southwestern Bell, however, seems to argue that your
5 interpretation is one-sided and erroneous.

6 Southwestern Bell notes that in Verizon the
7 Supreme Court specified that an ILEC must combine network
8 elements for a CLEC in certain situations and listed three:
9 when the requesting carrier is unable to combine network
10 elements, when it would not place the ILEC at a disadvantage
11 in operating its own network, and three, when it would not
12 place other competing carriers at a competitive
13 disadvantage.

14 It seems to me that this would require a lot
15 more than WorldCom has acknowledged in order to determine
16 what changes should be made that meet all the Verizon
17 requirements.

18 MR. LUMLEY: Well, your Honor, what I would
19 point out is that the attachment we submitted in our initial
20 response to Staff's questions, while it has very lengthy
21 documents attached, only nine pages have changes on them.

22 Those changes, with one exception, involve
23 eliminating language that would limit combinations to
24 existing combinations. The other exception is to add
25 language that says, and it's from the M2A, I believe, that

1 says we will pay them when they have to put things together
2 that aren't currently linked at the time. So we're not
3 talking about major changes.

4 The Supreme Court did not send the matter back
5 to the FCC and say, Rewrite your rule. It reinstated the
6 rules, and the rules apply subject to interpretation, you
7 know, under the Supreme Court decision.

8 And I submit that the agreement makes it
9 perfectly clear that it's operating within the confines of
10 the law, and if the Commission acknowledges that the Supreme
11 Court decision is applicable to the agreement, which of
12 course it is anyway, I mean, it accomplishes the purpose.

13 We're not in a position to completely
14 renegotiate these documents, but the Supreme Court and the
15 FCC rules have made it very clear that combinations cannot
16 be limited to things that are actually physically connected
17 at the time.

18 JUDGE RUTH: Okay. Now, the parties have the
19 option also of looking at this under the change of law
20 provisions. Your pleadings indicate it would be error for
21 the Commission to do that, however.

22 How is it error when what the Commission is
23 doing is saying implement the agreement that complies with
24 the Commission Order, and the Order was back from February
25 of 2002, and any change of law came after that? Normally

1 this would have happened much more quickly than it did. One
2 would have expected the agreements to be filed in March or
3 April.

4 MR. LUMLEY: I agree. I would have expected
5 it, too, I'm sure.

6 JUDGE RUTH: I don't remember when the date
7 was of the FCC decision, but it was after that, I believe.

8 So I understand that one way to handle it
9 would be what WorldCom wants. I'm not convinced that it's
10 error for the Commission to follow the agreement's terms
11 that say change of law will be handled in this manner.

12 MR. LUMLEY: The nature of the Section 252
13 process is a bit unusual. You make an arbitration decision
14 that resolves the list of issues that are presented in the
15 arbitration. Then the parties submit the agreement and the
16 Commission has to make another decision under Section 252,
17 and that decision is, based on the specific statutory
18 standard, that the agreement as submitted should be approved
19 and specifically that it complies with Section 251 and the
20 FCC's rules under that.

21 The Ninth Circuit decision that just came out
22 on September 23rd, the Jennings case that we've cited, makes
23 it clear that the reviewing court when it acts under
24 Section 252 is going to look at the agreement in the context
25 of the law as it exists at that time, not at the time the

1 arbitration decision was made, but at the time the reviewing
2 court is looking at it.

3 Well, the Commission's engaged in exactly the
4 same review after the agreement is submitted as the
5 reviewing court. It's not looking at the Arbitration Order
6 again. It's looking at the agreement submitted. And I
7 believe that the Jennings decision is equally applicable to
8 the Commission's obligation.

9 JUDGE RUTH: Wait a minute. I thought the
10 Commission was looking at does this agreement -- I mean, one
11 of the steps is does it conform to the Commission's
12 Arbitration Order.

13 MR. LUMLEY: Not really.

14 JUDGE RUTH: I mean, that's one of the steps,
15 and then also does it comply with 251 and --

16 MR. LUMLEY: I don't recall that being a
17 factor. I believe the factors are does the agreement
18 discriminate against other carriers and does it comply with
19 the law. I mean, I'm saying that a little broadly, but
20 that's the general. It actually cites sections, but --

21 JUDGE RUTH: So under your theory, if
22 something were to happen tomorrow, it would change the
23 Commission's review again?

24 MR. LUMLEY: Until it's actually presented to
25 you. When you're looking at the agreement and deciding

1 should we approve it or disapprove it under Section 252,
2 you have to examine it based on the laws that exist at that
3 time.

4 JUDGE RUTH: Okay. And I admit, I find it has
5 been difficult to tell when the parties have presented an
6 agreement in this case and when they have not because there
7 have been so many pleadings filed about problems, and it was
8 my understanding that the parties were still having
9 significant problems drafting an agreement. However, you
10 pointed out that one has been filed. You just want to
11 change it.

12 MR. LUMLEY: It's been submitted to Staff.
13 It's not been filed in the Commission's official record.

14 JUDGE RUTH: And you are wanting changes made
15 to that one?

16 MR. LUMLEY: Our position -- I mean, the
17 questions were raised and we responded to the questions, but
18 whenever the agreement is submitted, however more direct --
19 if the Commission says submit the conformed agreement,
20 obviously both parties will obey the Commission's Order, and
21 then both parties will make their arguments as to what the
22 Commission should do with it.

23 Since the question was asked, we raise it now,
24 and it's our view that there's a couple features that should
25 not be approved at this point.

1 JUDGE RUTH: And so if a case were to come
2 down tomorrow that affects these issues, the Commission
3 would have to stop again and figure out how that court case
4 applies to this situation here?

5 MR. LUMLEY: Unfortunately, I think that's
6 true, and we've seen that in other cases as well. I mean,
7 in several of the cases that spun off the 271 process
8 there's been decisions that have come down that have
9 required or at least caused the Commission to ask the
10 parties to submit additional Briefs because of a significant
11 change in the law.

12 It is an evolving process, and sometimes
13 that's a -- I mean, the Jennings decision came out as I was
14 finishing my pleading that I was getting ready to file. It
15 was the same day that I learned of it.

16 JUDGE RUTH: Do you remember the date on the
17 Jennings and the date on the Verizon?

18 MR. LUMLEY: Jennings was September the 23rd,
19 and Verizon May 13th.

20 JUDGE RUTH: Thank you.

21 MR. LUMLEY: Let me double check on Jennings.

22 JUDGE RUTH: Southwestern Bell, did you want
23 to respond on this issue?

24 MS. MacDONALD: I do. Briefly, I would note
25 that we don't think the Jennings decision is at all

1 applicable to the situation that we have before here, nor
2 does it not -- what it doesn't say is -- it remanded it, but
3 it doesn't say that the Commission can't order the parties
4 to negotiate, which I think that it could be.

5 And further, under 252(e)(1), it specifically
6 provides any interconnection agreement adopted by a
7 negotiation or arbitration shall be submitted for approval
8 to the state commission.

9 Well, we've never had a chance to negotiate
10 the change in law provision. I mean, we've started.
11 WorldCom apparently is not interested in continuing the
12 negotiations because they submitted language in this
13 specific docket which we do not believe the Commission can
14 approve.

15 JUDGE RUTH: So how are you suggesting that
16 WorldCom could have or should have handled this instead?

17 MS. MacDONALD: I think that what has to occur
18 is that the Commission needs to approve an interconnection
19 agreement.

20 After that, I think the change in law
21 provisions apply, and the parties are under a duty to
22 negotiate to come up with provisions that they think are
23 acceptable, and to the extent that they can't, then the
24 dispute resolution procedures come into play and then if and
25 only if that doesn't work can it be brought to the

1 Commission's attention.

2 I also would note, and I've attached in
3 several pleadings, WorldCom's own attorney Michael Schneider
4 says he agrees that the change of law provisions apply. So
5 it seems odd to me that we're here when we have an agreement
6 with WorldCom that we're supposed to be negotiating this
7 issue.

8 JUDGE RUTH: A couple of things. Now, respond
9 to the easier one perhaps. The reference to Mr. Sch--

10 MS. MacDONALD: Schneider.

11 JUDGE RUTH: -- Schneider's apparent conflict
12 with your position.

13 MR. LUMLEY: Well, your Honor, his e-mail
14 starts with the statement "Because the Section 252 process
15 is complete", and that's just a mistake on his part, whether
16 a misunderstanding or forgetting something or whatever.

17 I mean, we're here today. The Section 252
18 process is not complete, and that's the basis of our
19 position. This is not an agreement that's been approved.
20 It's not an agreement that's in effect, and he's just wrong.
21 I've never verified that he said it, but I'm accepting that
22 he did.

23 JUDGE RUTH: Southwestern Bell, what about
24 WorldCom's allegation that the Commission would be in error
25 if it did not take the new law, such as Verizon, we'll pick

1 just that case, into account when it's reviewing the
2 agreement?

3 MS. MacDONALD: I don't believe that the
4 Commission has that obligation, and one of the reasons why
5 the Commission should not do that is because we will never
6 get an interconnection agreement. To the extent that any
7 case comes down, we'll continually having to be stopping and
8 deciding how that affects the interconnection agreement.

9 I think that it's very -- that the
10 interconnection agreement was supposed to be submitted to
11 conform to the Arbitration Order and then it is approved and
12 then the change of law provisions come into, and I don't --
13 I honestly can say, I don't think there's any case law to
14 the contrary.

15 JUDGE RUTH: Do you want to respond?

16 MR. LUMLEY: Except for the Jennings decision
17 obviously, but --

18 JUDGE RUTH: Which has been remanded or
19 stayed? No?

20 MR. LUMLEY: Neither. I think she meant that
21 they remanded the agreement, is what she was referring to.
22 The decision is not anything but a decision. It was issued
23 on September 23rd. I'm sure the parties still have
24 appellate rights obviously, but I'm not aware of anything
25 affecting the Order at this point.

1 MS. MacDONALD: But by remanded what I meant
2 was it doesn't mean -- that case does not stand for the
3 proposition that the Commission can't order the parties to
4 negotiate, and I think the parties absolutely under
5 252(e) (1) have a duty to negotiate.

6 You can't just submit what you want as your
7 language and have very one-sided language that does not
8 address any of the limitations or qualifications the Supreme
9 Court placed on an ILEC's obligation to provide UNE
10 combinations and expect that that should be approved.
11 That's not the process that is set up under the Act.

12 And as far as striking a few words, and I know
13 we're kind of going back because you started out with this
14 discussion with Mr. Lumley quite a time ago, but you were
15 asking him questions about whether it addresses the
16 limitations, and I just wanted to briefly comment that we
17 don't believe it does.

18 I mean, we believe that we could agree to a
19 list of things that can currently be combined, but to the
20 extent that WorldCom would come up with some kind of a
21 combination that we either don't ordinarily do or have never
22 done, there's absolutely no process in WorldCom's documents
23 for addressing that.

24 And we need operational detail. We need to
25 know how -- we believe it should be submitted through the

1 bona fide request process, and then we need operational
2 detail, for example, how long we'll have to decide whether
3 we can put together a combination of UNEs that they request
4 that may or may not be feasible, let alone whether or not we
5 have an obligation to provide it, because we believe that
6 the Supreme Court has serious limitations on our duty to
7 combine UNEs.

8 JUDGE RUTH: And you believe those limitations
9 have not been incorporated into WorldCom's --

10 MS. MacDONALD: They're not even addressed at
11 all in that attachment.

12 JUDGE RUTH: Briefly, would you respond to
13 that, Mr. Lumley?

14 MR. LUMLEY: Well, what the Jennings decision
15 stands for and what we're arguing to the Commission is that
16 the conformed agreement, if it were to be submitted, if you
17 were to tell us to do that, should not be approved because it
18 violates the law. What happens next is probably more up to
19 the Commission.

20 I don't believe that the Jennings decision, as
21 Ms. MacDonald just stated, discusses what happens next.
22 What it says is we can't approve an agreement that violates
23 the law as it exists at the time we're examining the
24 agreement.

25 We've suggested that minimal corrections can

1 address it, and I would significantly disagree that the
2 special request process is inadequate to address the
3 situation she's mentioning, but we're going to get into very
4 detailed discussions at that point.

5 JUDGE RUTH: I have just a hypothetical
6 question for you. If the Commission were to agree that the
7 proposed agreement that has just been submitted to Staff
8 that we're having discussions on, if the Commission were to
9 agree that that did not conform to law as it now stands,
10 perhaps not what it was before but as it is now, and the
11 Commission were then to reject the proposed agreement, what
12 do you see happening next and how quickly?

13 MR. LUMLEY: Well, you know --

14 JUDGE RUTH: Because I would think it's also
15 in your party's interest to have an interconnection
16 agreement in place.

17 MR. LUMLEY: Certainly. I agree.

18 JUDGE RUTH: And it's not happened.

19 MR. LUMLEY: I agree. I'm not a big fan of
20 the Telecommunications Act of 1996 and the thought that went
21 into the processes, and I would say that no thought was
22 given whatsoever to what happens in that instance because
23 the statute does not tell you what to do.

24 I believe that it would be incumbent on the
25 Commission to direct the parties to do something to bring it

1 to a rapid conclusion.

2 JUDGE RUTH: Under what authority would the
3 Commission do that and what kind of time frame, and what
4 would the Commission be operating under then?

5 MR. LUMLEY: I believe that when the
6 Commission has the power to reject something -- this has
7 come up in other cases before, and there actually is case
8 law, though I'm not going to be able to tell you the case
9 name right now.

10 But when you have the ability to reject
11 something, that also means you have the ability to reject
12 with conditions, that if those conditions are --

13 JUDGE RUTH: Like in a rate case where the
14 Commission says we won't take this one but we would take a
15 rate plan that does A, B and C, you think the Commission
16 should give guidance?

17 MR. LUMLEY: I think that's an alternative. I
18 would have to concede it's also an alternative for the
19 Commission to tell the parties, you will get together and
20 you will either agree or disagree and you're going to come
21 back to us on date certain and either tell us you agreed or
22 tell us what your positions are and we'll address it.

23 I mean, it has to be implicit in here because
24 nobody bothered to expressly address it.

25 JUDGE RUTH: Do you think it's likely that the

1 parties would negotiate fairly quickly or do you see this
2 dragging on?

3 I mean, if you were to get what you want, have
4 the agreement rejected, in your best case scenario, won't it
5 be many, many, many months probably before there is a
6 conformed agreement that has been approved by the
7 Commission?

8 MR. LUMLEY: Well, I would hope not, and
9 notwithstanding everybody's desire to get things done,
10 whatever the hottest deadline is is what gets the people's
11 time. That's just human nature, and it applies to both
12 sides.

13 And if the Commission were to say this has got
14 to be done by X date, now Ms. MacDonald and I can both look
15 at the people we deal with and say, This must be done by X
16 date and, therefore, it's the most important thing you have
17 to do today. So I would hope it wouldn't drag out forever.
18 I can understand --

19 JUDGE RUTH: How long would negotiations take?
20 You can't speculate?

21 MR. LUMLEY: I don't know.

22 MS. MacDONALD: Your Honor, can I say one
23 thing about the it would be erroneous for the Commission
24 to --

25 JUDGE RUTH: You're not quoting me, are you?

1 MS. MacDONALD: No. When Mr. Lumley was
2 saying that he thought it would be erroneous for the
3 Commission to approve the interconnection agreement if it
4 did not --

5 JUDGE RUTH: I was paraphrasing some of his
6 pleadings --

7 MS. MacDONALD: Right.

8 JUDGE RUTH: -- that seemed to suggest that he
9 thought it would be an error for the Commission to not take
10 into account the Verizon and the Jennings case. That was my
11 paraphrase.

12 MS. MacDONALD: Right.

13 MR. LUMLEY: That's correct.

14 MS. MacDONALD: Right. And I just want to say
15 one thing on that. A major problem that we have with the
16 proposal that they have submitted to address UNE
17 combinations, because they don't believe that they're
18 currently addressed in Verizon, is that it assumes that
19 WorldCom is unable to combine UNES, which we don't concede
20 at all, and the Supreme Court in its limitations said we
21 only have that duty to the extent that they're unable to
22 combine UNES.

23 JUDGE RUTH: Could you state that again?

24 MS. MacDONALD: Sure. A major problem that I
25 have with their attachment is that they're saying that,

1 here's how we fix it, we'll reinstate what the rules say,
2 but never in that agreement do they say that we only have
3 the obligation to do that when they cannot combine
4 themselves.

5 So if they can combine, the current agreement
6 in our opinion would be sufficient, and I think that that's
7 just another basis for the reason why it should be approved
8 as is, and to the extent that MCImetro in this case --

9 JUDGE RUTH: What about when they can't
10 combine?

11 MS. MacDONALD: Well, then I think that they
12 have to invoke the change of law provision.

13 JUDGE RUTH: And bring in the Verizon case at
14 that point?

15 MS. MacDONALD: Absolutely.

16 JUDGE RUTH: What about the fact that the
17 Telecommunications Act of 1996 does require the Commission
18 to look at 252, the implementing regulations and the law to
19 see if it complies?

20 MS. MacDONALD: Well, I think that -- I think
21 that they have to show that it doesn't comply, and I don't
22 think they've made that showing. They're assuming that the
23 language in the UNE com-- regarding UNE combinations isn't
24 accurate, and that's not an assumption I think the
25 Commission should go with.

1 I think that the assumption should be that
2 they can combine, and to the extent that they can't, then
3 they need to invoke the change of law provisions. And I
4 guess it goes back to the whole other problem that we
5 need -- we were in the process of negotiating changes if
6 they thought that they were necessary, and I think that
7 that's required before the Commission could do anything.

8 JUDGE RUTH: Well, let me make sure. I'm
9 confused about one point, then. Are you saying the proposal
10 that the parties have at this point does or does not comply
11 with the Verizon case?

12 MS. MacDONALD: I think it very well may.

13 JUDGE RUTH: So you're saying it may?

14 MS. MacDONALD: That's why we said that it did
15 not necessarily -- I mean, to the extent that they believe
16 that it doesn't, I think that they have to come to us under
17 the change of law provisions and tell us it doesn't.

18 And I think that that's exactly what was
19 referenced in the e-mail from Mr. Schneider, and I think we
20 have -- we have stated on repeated occasions we're more than
21 willing to negotiate if they believe that there needs to
22 be -- there needs to be changes to the Attachment 6
23 regarding the UNE combinations.

24 So, I mean, my initial position is absolutely
25 it should be approved as is. If it's change in law, then

1 you -- we have to negotiate, there has to be dispute
2 resolution, and if and only if that doesn't work do we come
3 before the Commission.

4 But regardless, even if that position isn't
5 acceptable or accepted by the Commission, 252(e)(1) requires
6 negotiations. So you can't just get rid of this
7 negotiation. There's no way to just accept WorldCom's
8 proposed language.

9 JUDGE RUTH: Now, Staff, I wanted to ask you a
10 question. Your pleading from August 9th, I believe,
11 mentions the Verizon case. You, I believe, use language
12 that there's a potential conflict or there could be a
13 conflict between the interconnection agreement and the
14 Verizon case.

15 Since that time, have you had an opportunity
16 to look at the case more closely, read the parties'
17 pleadings, and has Staff come to a conclusion as to whether
18 or not the agreement does conflict with the new cases,
19 whether it's Verizon or Jennings?

20 MR. BATES: Yeah, we think there is a
21 conflict.

22 JUDGE RUTH: Can you expand upon that?

23 MR. BATES: Frankly, not other than what's
24 already set out in the pleading.

25 JUDGE RUTH: Okay. And are you referring to

1 your August 9th pleading?

2 MR. BATES: Yes. I'm sorry. Yes, the
3 August 9th pleading.

4 JUDGE RUTH: Staff, can you tell me what would
5 need to be changed in your opinion to resolve what you see
6 as the conflict? Because, Staff, I mean, it's my -- my
7 reading of your status report was this is not a final
8 recommendation, it was information, that it was pointing out
9 to the Commission some questions or concerns you had, it was
10 not a final recommendation.

11 If you believe there's an apparent conflict,
12 then it's possible Staff's final recommendation would be to
13 reject the agreement as it's written?

14 MS. DIETRICH: When we made our original
15 recommendations to the Commission before their decision, it
16 was based on --

17 JUDGE RUTH: You mean back before the February
18 arbitration?

19 MS. DIETRICH: Right. It was based on the at
20 that time ideal or previous decisions or whatever that
21 Southwestern Bell was not required to combine unbundled
22 network elements for WorldCom, which was some of the
23 language in the original agreement that was proposed did
24 request certain combinations. And so our recommendation
25 that they not have to combine was based on decisions at that

1 time.

2 Since the Commission's Order, the Supreme
3 Court has, like you said, come back and said there are
4 certain circumstances where ILECs should combine unbundled
5 network elements, and so in the pleading we were trying to
6 point out that basically the recommendation that they were
7 not required to combine elements was based on a decision
8 that had since been changed.

9 And so just off the top of my head, I would
10 say anywhere that there was language we would have to look
11 at again throughout the agreement, the proposed agreements,
12 anywhere that they had originally proposed there be
13 combinations, that language may, in fact, be appropriate
14 now.

15 But as far as whether it meets the criteria
16 set out in the Supreme Court's decision of whether
17 WorldCom's capable of doing it or not and that type of
18 thing, we have not done that type of an analysis.

19 JUDGE RUTH: So have you looked at WorldCom's
20 proposed changes, the attachment where you mention there may
21 be like nine changes, something like that?

22 MR. LUMLEY: Nine pages.

23 JUDGE RUTH: Nine pages, sorry, of changes.

24 MR. LUMLEY: But a couple pages have two
25 different sentences that are affected.

1 JUDGE RUTH: Does Staff agree that WorldCom's
2 changes would make the agreement conform with the new case
3 law?

4 MS. DIETRICH: I don't know that I could say
5 that, that it would be all-inclusive or not.

6 JUDGE RUTH: Okay. Now, then, Staff, I
7 believe you've indicated that you believe the proposed
8 agreement does not conform to the new Verizon case.

9 Do you agree with WorldCom's interpretation
10 that it would be error for the Commission to look at the law
11 as it was when the arbitration decision was issued, in other
12 words WorldCom says the Commission has to take Verizon into
13 account when it's deciding whether to approve the agreement
14 or not, or do you side with Southwestern Bell who has
15 indicated that, first of all, the Commission -- or the
16 Verizon case may not conflict with the Commission's
17 Arbitration Order?

18 MR. BATES: Since the Commission has not
19 issued its final Order yet, I think it has to take the
20 Verizon decision into consideration.

21 JUDGE RUTH: You mean the Order approving the
22 interconnection, the interconnection agreement?

23 MR. BATES: Yes.

24 JUDGE RUTH: So if the Staff were to make a
25 recommendation tomorrow, if the Commission were to say,

1 Okay, give us your Staff rec, does the proposed agreement
2 conform, should it be approved or rejected, you would have
3 to say reject? I'm not trying to put words in your mouth.
4 I'm trying to understand what your position is.

5 MR. BATES: We'd like -- I suppose we'd like
6 to look at it again, but I think, as we said, certainly that
7 there's a possibility of a rejection, yeah.

8 JUDGE RUTH: Okay. I don't have any more
9 questions. I am not soliciting or requesting any kind of
10 written brief. If you want to respond, I suggest a very
11 quick turnaround, say by Monday, and it would be one round
12 only. Again, you're not required. I'll just -- if there's
13 going to be anything, I'll expect it by Monday at the
14 latest, unless someone files a motion for an extension and
15 explains to me why that's not feasible.

16 Do the parties have anything else they need to
17 ask or add on the record?

18 MR. BATES: Your Honor, if I might, granting
19 that in no way is the Commission bound to any time limit
20 request by the parties and certainly it's not the
21 Commission's responsibility that this matter has dragged on
22 as it has, but do you anticipate the Commission will be
23 making a final order in the near future?

24 JUDGE RUTH: First of all, you didn't ask, but
25 I'll tell you that as to the other two agreements, I expect

1 something to be issued perhaps next week on the WorldCom and
2 Brooks agreements.

3 As for this one, I'm hoping it's done fairly
4 quickly, but I would hate to give you a date.

5 MR. BATES: But you would not anticipate that
6 there will be a request by the Commission for additional
7 pleadings after next Monday unless something very unusual
8 shows up in the pleadings?

9 JUDGE RUTH: Well, if case law changes again
10 in the next few days, who knows. I'm not anticipating --
11 I'm sorry. I'm not anticipating any further rounds. It's
12 possible, however, when I get back to my desk I may realize
13 that I still didn't get a question answered.

14 MR. BATES: Ms. Dietrich reminds me that, when
15 would you expect if you wanted a final Staff recommendation
16 on this last agreement?

17 JUDGE RUTH: It would come following Monday's
18 pleadings. And that's one thing I want to look at, and I
19 anticipate I will issue an Order Directing Filing regarding
20 that. There might be something else contained in it also.
21 I just -- I made a lot of notes. I think I've had questions
22 answered, but when I get back to my desk there may be
23 something else.

24 And I said no more questions, but I wasn't
25 sure -- you know, Ms. MacDonald, you've indicated in

1 pleadings and today that you have some serious concerns,
2 reservations or complaints about the proposed agreement, but
3 I want to make sure I understand. It is still your position
4 that the Commission should approve it?

5 MS. MacDONALD: No, we don't believe that the
6 Commission should approve it because we do not believe that
7 they can approve it with Attachment 27.

8 JUDGE RUTH: So back to the feasibility?

9 MS. MacDONALD: Right.

10 JUDGE RUTH: With 27, you think it should not
11 be approved. However, you would agree that Attachment 27
12 was ordered to be included by the Commission in its
13 Arbitration Order?

14 MS. MacDONALD: I would agree that that's what
15 they ordered, and that is the reason why we submitted the
16 conformed agreement, not that we agree with it.

17 JUDGE RUTH: So your agreement that the
18 Commission shouldn't approve it, but that gets back to the
19 heart of the whole issue that was at hearing, was it
20 feasible, was it not, and that was decided by the Commission
21 in the Arbitration Order that 27 should be included.

22 So your only objection, then, would be not
23 that it doesn't conform to current law, not that it doesn't
24 conform to the Commission's arbitration agreement, but that
25 the Commission should have never ordered that to begin with?

1 MS. MacDONALD: They should have never ordered
2 it to begin with, and even if they do order it now by
3 approving the conformed interconnection agreement, we simply
4 cannot implement it. There's no way we can implement it.
5 So whether we address this issue now or we wait, it's going
6 to -- it's going to arise because --

7 JUDGE RUTH: If the Commission orders an
8 agreement to be filed that conforms to the Arbitration Order
9 and then approves such agreement, and if Southwestern Bell
10 then feels that certain provisions of it cannot be
11 implemented, Southwestern Bell can either appeal or work
12 with the company for possible negotiations for changes to
13 the agreement; is that correct?

14 MS. MacDONALD: Yeah, I agree we can appeal,
15 and I do agree and we are in negotiations about attempting
16 to address Attachment 27 because it's just not feasible.

17 JUDGE RUTH: But it's not -- those
18 negotiations aren't going to lead to the parties offering
19 anything in exchange for Attachment 27 in the near future?

20 MS. MacDONALD: I would hope that it would
21 allow us to submit a different Attachment 27 that would be
22 technically feasible so that there wouldn't be any need to
23 appeal.

24 JUDGE RUTH: But there's been no motion by any
25 party that the Commission not move forward?

1 MS. MacDONALD: In our pleadings --

2 JUDGE RUTH: There has been no pleading saying

3 we're in negotiations, don't look at our potential conformed

4 agreement, we want to try again?

5 MS. MacDONALD: I think in our pleadings we

6 specifically say that they should reject Attachment 27.

7 JUDGE RUTH: And have --

8 MS. MacDONALD: But I agree with you that I

9 don't know that there's a reference to --

10 JUDGE RUTH: The basis for the Commission

11 rejecting 27 would be for the Commission to say the

12 Commission made an error and should not have ordered that to

13 be included?

14 MS. MacDONALD: Yes, that they misunderstood

15 June Burgess' testimony, and she indicated those were

16 examples and there were other reasons why it could not be

17 implemented.

18 JUDGE RUTH: And that would be your only

19 objection to the proposed agreement, Attachment 27?

20 MS. MacDONALD: Of course there's other things

21 we'd like changed --

22 JUDGE RUTH: Well, no. At this --

23 MS. MacDONALD: -- but yes, Attachment 27 is a

24 big problem.

25 JUDGE RUTH: However, WorldCom, it's my

1 understanding you just think the Commission should reject
2 the agreement as it is as you submitted a draft to Staff?

3 MR. LUMLEY: Are you talking about the
4 conformed -- when you say a draft, you're talking about the
5 conformed agreement that the parties submitted to Staff?

6 JUDGE RUTH: That the parties submitted to
7 Staff, that you want a new attachment and --

8 MR. LUMLEY: We don't believe that that should
9 be approved. We're asking the Commission to direct the
10 parties to submit with the deletion of 9.4.2.6 and the
11 changes on combinations.

12 JUDGE RUTH: Of course, Southwestern Bell's
13 pointed out that they would like to have the Commission keep
14 Attachment 27 out, not put in your --

15 MR. LUMLEY: And I can tell you that if my
16 clients thought that the Commission wanted to know every
17 point where they believed the Commission made a mistake, I
18 could probably come up with a few things they'd like
19 reconsidered, too.

20 JUDGE RUTH: I understand that, and I did try
21 to point out in the beginning it was not the Commission's
22 intention to relitigate what went into the Arbitration
23 Order. The question is now getting an agreement that
24 conforms to the Arbitration Order and conforms to law,
25 whatever that law may be.

1 MR. LUMLEY: I agree.

2 JUDGE RUTH: And Staff has not wanted to give

3 a final answer, but they tend to be leaning towards

4 rejecting the agreement as it is now, correct?

5 MR. BATES: But again, it's not the final

6 answer, if I may say that.

7 JUDGE RUTH: Got it. I think there's nothing

8 else. We will go off the record. The posthearing

9 conference is over.

10 WHEREUPON, the posthearing conference was

11 concluded.

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